



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2020-0562; FRL-8855-02-Region 1]

Air Plan Approval; Rhode Island; Infrastructure State Implementation Plan Requirements for the 2015 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving most of a State Implementation Plan (SIP) revision submitted by the State of Rhode Island to address the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 ozone National Ambient Air Quality Standards (NAAQS). This action does not address three requirements related to interstate transport. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program, including provisions prohibiting emissions that will have certain adverse air quality effects in other states, are adequate to meet the state's responsibilities under the CAA. This action is being taken in accordance with the Clean Air Act.

DATES: This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2020-0562. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not

placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square - Suite 100, (Mail code 05-2), Boston, MA 02109 - 3912, tel. (617) 918-1684, email simcox.alison@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. Background and Purpose

On August 17, 2021 (86 FR 45939), EPA published a notice of proposed rulemaking (NPRM). The NPRM proposed approval of most elements of a Rhode Island SIP revision addressing the infrastructure requirements of the Clean Air Act (CAA or Act) - excluding three interstate transport provisions under section 110(a)(2)(D)(i) - for the 2015 ozone National Ambient Air Quality Standards (NAAQS). This NPRM also proposed to disapprove one element, section 110(a)(2)(H)(Future SIP revisions). However, remedying Federal regulations are already in place for this element and a disapproval requires no further action by EPA or the state.

Rhode Island submitted the formal SIP revision for the 2015 ozone NAAQS on September 23, 2020. The rationale for EPA's proposed action is given in the NPRM and will not be restated here. No public comments were received on the NPRM.

II. Final Action

EPA is approving most elements of Rhode Island's September 23, 2020, infrastructure SIP submission for the 2015 ozone NAAQS as a revision to the Rhode Island SIP. This action does not include three interstate transport provisions under section 110(a)(2)(D)(i), namely the "good neighbor" provisions at section 110(a)(2)(D)(i)(I) (also known as the State's Transport SIP or "prongs 1 and 2") and the provision relating to visibility protection at 110(a)(2)(D)(i)(II) (also known as "prong 4"). EPA will address these requirements for the 2015 ozone NAAQS in future actions.

In addition, we are disapproving section 110(a)(2)(H) (Future SIP revisions) because the State's original SIP did not fully satisfy this element and Rhode Island's September 23, 2020, submittal likewise does not address this gap. However, no further action by EPA or the State is required because remedying Federal regulations are already in place. *See* 40 CFR 52.2080. Moreover, mandatory sanctions under CAA section 179 do not apply because the submittal is not required under CAA title I part D nor in response to a SIP call under CAA section 110(k)(5).

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations, 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct

costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 6, 2021.

Deborah Szaro,
Acting Regional Administrator,
EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart OO - Rhode Island

2. In § 52.2070(e), amend the table by adding an entry for “Infrastructure SIP for the 2015 Ozone NAAQS” at the end of the table to read as follows:

§ 52.2070 Identification of plan.

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(e) * * *

Rhode Island Non Regulatory

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Explanations
**	*	*	*	**
Infrastructure SIP for the 2015 ozone NAAQS	Statewide	10/15/2020	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	This submittal is approved with respect to the following CAA elements or portions thereof: 110(a)(2)(A); (B); (C); (D) except (D)(i)(I) and (D)(i)(II)–visibility protection; (E); (F); (G); (J); (K); (L); and (M). This submittal is disapproved for element (H). See §52.2077.